IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.2916 OF 1987

Khushiram Beharilal : Plaintiff

V/s.

Kidarnath Sons : Defendant

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Mr.M.L.Bansal for the plaintiff.

None present for the defendant.

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CORAM : S.A.BOBDE, J.

DATE : FEBRUARY 9, 2007.

P.C.

1. In this suit which was filed as a summary suit, this Court granted leave to defend on condition that the defendant deposits Rs.1,25,000/- within four weeks from 26.2.1988. The defendant was permitted to file written statement within six weeks thereafter. Though this amount was deposited, it was reduced by the Division Bench on 30.3.1988 to Rs.1,00,000/-.

2. Admittedly, the amount has been deposited, but the defendant has not filed their written statement. In the circumstances, this is a fit case to proceed under Order VIII Rule 10 of the C.P.C.

3. The suit is for recovery of unpaid price of goods i.e. 898 bags of dry dates. The value of the goods is Rs.9,21,156.06. After making deductions, the only outstanding is Rs.3,43,314.31 as is apparent from the sales account statement at exh.'A'. Upon further part payment, the amount due to the plaintiff is Rs.2,18,314.31. This amount along with interest in the sum of Rs.1,27,937.94 was demanded by the plaintiff by their notice dated 7.3.1987. The defendant replied on 28.6.1987 that the amount claimed is not the correct amount. Eventually after another notice dated 27.6.1987 was not replied to, the plaintiff has filed this suit.

4. The suit claim is supported by documents such as sales account statement submitted by the defendant to the plaintiff which is duly signed by the defendant and day-wise bills.

5. In view of the uncontroverted averments in the absence of written statement, the plaintiff is entitled to a decree in the sum of Rs.2,18,314.31 with interest thereon at the rate of 12% per annum. It may be mentioned that there is no specific prayer for interest made in the plaint. However, the same is granted in view of section 34 of the C.P.C.

6. Decree be drawn up accordingly.

S.A. BOBDE, J.